

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL N. KELSEY,
Plaintiff,

v.

CHRISTOPHER SHERMAN, individually and
in his official capacity; KATHY HOCHUL,
individually and in her official capacity; NEW
YORK STATE BOARD OF PAROLE; NEW
YORK STATE DOCCS POUGHKEEPSIE
BUREAU; ST. LAWRENCE COUNTY
DISTRICT ATTORNEY; and ATTORNEY
GENERAL LETITIA JAMES,
Defendants.

ORDER

22 CV 1934 (VB)

10/18/23

Copies Mailed/Faxed
Chambers of Vincent L. Briccetti, Jr.

By Opinion and Order dated May 31, 2023, the Court granted defendants Christopher Sherman and Governor Kathy Hochul's motion to dismiss the complaint in this matter. (Doc. #27). The Court nevertheless granted plaintiff, proceeding pro se, leave to file, by June 30, 2023, an amended complaint to pursue only First Amendment and Fourteenth Amendment procedural due process claims. (Id.).

On July 5, 2023, the Court received plaintiff's amended complaint dated June 30, 2023, which was separately docketed. (Doc. #29). The amended complaint names as defendants Christopher Sherman, Governor Kathy Hochul, NYS Board of Parole, NYS DOCCS Poughkeepsie Bureau, St. Lawrence County District Attorney, and Attorney General Letitia James.

Also on July 5, 2023, the Court received a letter from plaintiff in which he stated: "As I was granted poor person status I presume the Court will take care of serving the Defendants?" (Doc. #28).

By Order dated July 5, 2023, the Court reminded plaintiff he is barred from proceeding in forma pauperis and thus is not entitled to rely on the U.S. Marshal's Service to effect service on the newly named defendants—NYS Board of Parole, NYS DOCCS Poughkeepsie Bureau, St. Lawrence County District Attorney, and Attorney General Letitia James. The Court instructed plaintiff to request the Clerk of Court issue summonses for the newly named defendants and serve the summons and the amended complaint on these new defendants within 90 days of the issuance of the summonses. The Court further warned plaintiff that if, within those 90 days, he had not either served the new defendants or requested an extension of time to do so, it may dismiss plaintiff's claims against those defendants for failure to prosecute. (Doc. #28).

The Clerk of Court issued the requested summonses and mailed them to plaintiff on July 19, 2023. (Doc. #31). Thus, plaintiff had until October 17, 2023, to serve the newly named defendants. However, the docket does not reflect that these defendants have been served.

Accordingly, it is hereby ORDERED:

1. In consideration of plaintiff's pro se status, his deadline to serve the summons and amended complaint on the newly named defendants is sua sponte extended to **November 17, 2023**. The Court will not grant any further extensions.

2. By **November 17, 2023**, plaintiff must file on the ECF docket proofs of service indicating the new defendants were served on or before that date. **If plaintiff fails to do so, the Court will dismiss the claims against the new defendants under Rules 4 and 41 of the Federal Rules of Civil Procedure.**

3. The time for all defendants to answer, move, or otherwise respond to the amended complaint is STAYED pending further Court Order.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. Cf. Coppededge v. United States, 369 U.S. 438, 444–45 (1962).

Chambers will mail a copy of this Order to plaintiff at the address on the docket.

Dated: October 18, 2023
White Plains, NY

SO ORDERED:



Vincent L. Briccetti
United States District Judge